Filed 1/16/13 Kita v. Super. Ct. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

TAKAHITO KITA, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; KANAKO KITA, Real Party in Interest.	B239971 (Los Angeles County Super. Ct. No. YD058764)

ORIGINAL PROCEEDING; petition for writ of mandate. John A. Slawson, Temporary Judge. Petition granted.

Law Office of Miyuki Nishimura, Miyuki Nishimura and Robert M. Brodney for Petitioner.

No appearance for Respondent.

Law Office of Irwin M. Friedman and Irwin M. Friedman for Real Party in Interest.

INTRODUCTION

Petitioner Takahito Kita requests that we issue a preemptory writ of mandate directing the trial court to vacate its February 9, 2012 order denying his motion to quash service of the summons and petition by real party in interest Kanako Kita and to enter a new order granting the motion. We grant the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Takahito Kita (Husband) and Kanako Kita (Wife) were married on December 18, 2003, in Japan. Their daughter, Yurina, was born in 2005 in Japan. Their son, Koutaro, was born in 2008 in Japan. Husband, Wife and their children are citizens of Japan.

In 2008, Husband's employer, Fujitsu Ten, a Japanese corporation, temporarily transferred Husband's work assignment to Fujitsu Ten Corp. of America in Torrance, California. His employer sponsored him, as the principal visa holder, and his family under an E-2 non-immigrant visa. E-2 visas are only for temporary employment in the United States for a limited time period. Husband's E-2 visa was set to expire in 2013.

On December 25, 2010, Husband learned that Wife had been having an affair with Hiro Kawata (Kawata) for about a year. When Husband questioned Wife about the affair, she left their home with their son. Husband believed their marriage was over and arranged with his employer to return to Japan with his daughter the next day, December 26. Husband's E-2 visa was cancelled without prejudice.

Wife filed the instant action for marital dissolution in California on December 27.

Husband opened a dissolution case in family court in Fukuoka, Japan on January 6, 2011. Husband had a registered California process server personally serve Wife in Torrance on January 11.

The Japanese court notified Husband of the first mediation set for February 22. In early February, the clerk at the Japanese court notified Husband that the court received a

letter from counsel for Wife stating that she would not attend the mediation and had filed her action in California prior to Husband's filing in Japan.

On February 24, 2011, someone dropped off some documents addressed to Husband at the front desk in the building where he worked.

On March 1, by special appearance, Husband filed a motion to quash service of summons and to stay or dismiss the instant action in California. He claimed that summons should be quashed due to lack of proper service. He also requested a stay or dismissal of the California action on the grounds of forum non conveniens. Husband argued that the Japanese court was a suitable forum, in that all the issues could be litigated there, a judgment valid in Japan could be obtained there, all parties were Japanese citizens, and Wife had no legal status in the United States, given that Husband's E-2 visa was cancelled.

On March 17, Wife filed three proofs of service purporting to be for service on Husband. The first proof of service was for personal service on "Takahito Kita Sub-Served on Mako Yoshioka." It stated that, on February 25, 2011, Nick N. Ichimaru (Ichimaru) personally delivered the summons, petition and other documents to Mako Yoshioka at the address of "1-2-28 Goshodori, Hyogo-Ku Kobe-Shi, Hyogo, 652-8510 Japan." The "name, address, and telephone number" of the person serving the process appeared as "Nick N. Ichimaru 1838 Crestwood St., Rancho Palos Verdes, CA 90275." There was no check mark in the box stating "I am not a registered California process server" or any of the four other categories listed on the form.

The second proof form was for service by mail of the same documents on "Takahito Kita" on March 4, 2011, addressed to "1-2-28 Goshodori, Hyogo-Ku, Kobe-shi, Hyogo 652-8510 Japan."

The third proof form was for service by mail of the same documents on "Takahito Kita" on March 4, 2011, addressed to "1-1-45-713 Goshikiyama, Tarumi-Ku, Kobe-shi, Hyogo 655-0035 Japan." Neither the second nor the third proof of service by mail indicates that the mailing was by certified return-receipt requested or registered mail.

In August 2012, the trial court held a hearing on Husband's motion to quash and, thereafter, considered written briefs in lieu of closing arguments. Husband filed an opening brief contending that the manner of service did not comply with the requirements of the Hague Service Convention, citing, inter alia, *Honda Motor Co. v. Superior Court* (1992) 10 Cal.App.4th 1043. Wife filed a response brief arguing that service as effected was sufficient under *Denlinger v. Chinadotcom Corp.* (2003) 110 Cal.App.4th 1396. In November, the trial court heard oral argument. The court directed the parties to review and submit a briefing upon the case of *Lemme v. Wine of Japan Import, Inc.* (E.D.N.Y. 1986) 631 F.Supp 456, which the court believed was controlling. After hearing additional argument, on February 9, 2012, the trial court denied the motion to quash.

In explaining its decision, the trial court referred to the statements in Husband's declaration that someone dropped off documents addressed to him at his work and that Husband believed that this was not proper service according to the Hague Service Convention.[1] The court said that the statements confirmed that Husband knew of the papers. The court stated: "I'm satisfied that this service was done in a way by mail that does meet the mandates—which are vague from Japan. But it does meet the mandates that he knows about it and circumstances are such that notice has been conveyed. [¶] So for that reason the court denies the motion to quash the service in this case."

Earlier in the hearing, the trial court had determined that the Hague Service Convention was controlling; Article 10(a) of the Convention authorized service by "postal channels"; and service by mail was valid, in that Japan had submitted a comment to the Convention regarding service through postal channels but had not objected to it. The court said that Japan's comment "talks about how Japan basically says it's okay.

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[1] In Husband's declaration dated March 1, 2011, paragraph 11, he stated: "[Wife] informed me that she filed dissolution of marriage in Family Court in California. However, as of this date, I have not been properly served with any of her moving papers. On February 24, 2011, someone dropped off some documents address[ed] to me at the front desk at my work. I am informed and believe that this was not proper service on a resident living in Japan according to the provisions of [the] Hague Service Convention."

However, we want to be sure our citizens truly know what's going on. [¶] And I'm satisfied from the evidence [Husband] knew what was going on."[2] The court read Japan's comment that service by postal channels would not be "valid service in Japan in circumstances where the rights of the addressee were not respected." The court said, "My interpretation is rights means that you really know you're being sued" and thus "[i]t is important in this analysis if the method used did convey notice or if it did not."

Husband's attorney argued that there was no evidence that the service papers were addressed to Husband's home address or about where the mailing actually went, and there was no signed receipt by Husband to show he actually received the mailing. The court said, "Doesn't matter. . . . There's never been a factual dispute here. [Husband] never denied in his declaration he ever received it. So they don't have to prove that he received it under the Hague cases, the *Lemme*[*v. Wine of Japan Import, Inc.*, *supra*, 631 F.Supp. 456] case. There doesn't have to be registered certified mail." The court observed that Husband had not claimed that he never received the documents.

Husband filed a motion for reconsideration. At the hearing on the motion in June 2011, Kawata testified that he obtained documents to be served from Takahashi, who worked for Wife's attorney. He stated that Takahashi told him "that the documents to be served in connection with this, they have to be signed by the other party." Kawata testified that he gave the documents to Ichimaru, his business associate, to serve them, and that Ichimaru was not a government employee. The trial court denied the motion for reconsideration in March 2012.

Husband promptly filed the instant petition for writ of mandate pursuant to Code of Civil Procedure section 418.10, subdivision (c).[3]

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[2] During the first day of the hearing, the trial court said that it agreed with Husband's attorney that if service is "not done within the rules, knowledge that you're being sued is meaningless."

[3] Further statutory section references are to the Code of Civil Procedure unless otherwise identified.

DISCUSSION

Husband contends the trial court improperly denied his motion to quash service of summons on the basis of the court's finding that Husband had actual notice of the dissolution proceedings. The question before the trial court and now before us is whether Wife's attempted service of process[4] on Husband was valid either (1) by substituted service—personal delivery to Husband, a Japanese citizen, at his place of work in Japan, followed by ordinary mail addressed to him at the same address; or (2) by ordinary mail to Husband at an address in Japan suspected, but not known, to be his residence, in the absence of any receipt or written record showing that Husband actually received the service documents.[5]

A. *Insufficiency of Actual Notice as Valid Service*

The trial court's stated reason for denying Husband's motion to quash was that he had actual notice of the dissolution action. In *Kott v. Superior Court* (1996) 45 Cal.App.4th 1126, we held that "[f]ailure to comply with the Hague Service Convention procedures voids the service even though it was made in compliance with California law. [Citation.] This is true even in cases where the defendant had actual notice of the lawsuit. [Citations.]" (*Id.* at p. 1136; see also *In re Vanessa Q.* (2010) 187 Cal.App.4th 128, 135

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[4] Hereinafter, references to "service" or "serve" are intended to refer to service of process. "Service of process refers to a formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action. [Citations.]" (*Volkswagenwerk Aktiengesellschaft v. Schlunk* (1988) 486 U.S. 694, 700 [108 S.Ct. 2104, 100 L.Ed.2d 722].)

[5] Husband also requests that we direct the trial court to order that any further service of process by Wife must be accomplished in accordance with the requisites of the Hague Convention for Service through the Central Authority of Japan, through Japanese diplomatic channels or according to the laws of Japan for service of process. We decline to consider this request, in that the processes required for valid service on Husband in Japan are already governed by existing California law, federal law and the Hague Service Convention, as discussed in our opinion.

[defective service of process is not cured by actual notice of the action]; *Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 415.) "California is a jurisdiction where the original service of process, which confers jurisdiction, must conform to statutory requirements or all that follows is void. [Citations.] . . . [¶] . . . [¶] . . . The fact that the person served 'got the word' is irrelevant." (*Honda Motor Co. v. Superior Court*, *supra*, 10 Cal.App.4th at pp. 1048-1049 [holding that service in Japan upon a Japanese corporation by certified mail was not valid under California law or the Hague Service Convention, even though evidence showed the corporation had actual knowledge and the service documents bore the corporation's receipt stamp]; see § 410.50, subd. (a).)

B. *Determination of the Validity of Service on Husband in Japan*

Arguments presented by the parties suggest that assessment of the validity of service on Husband in Japan involves a series of issues, including whether: (1) the Hague Service Convention applies and preempts California law; (2) the Hague Service Convention authorizes mail for service of process requiring transmittal of service documents to Japan; (3) ordinary mail (rather than, e.g., certified, registered or other return receipt requested method of mailing) to Japan is sufficient to constitute valid service under the Convention; and (4) ordinary mail to Japan constitutes valid service under California law. We emphasize that our analysis will be limited to whether the service is sufficient for the trial court to assert jurisdiction over Husband, provided that other jurisdictional requirements are met. We also note that valid service for the purposes of a California court will not necessarily constitute valid service under Japanese law required for a Japanese court to recognize and enforce the California court's judgment in Japan.

1. Applicability of the Hague Service Convention

Service of process abroad is addressed in section 413.10, subdivision (c). The statute provides that, when the person is to be served outside the United States, a summons must be served as provided by the Code of Civil Procedure, as directed by the

trial court, "or, if the court before or after service finds that the service is reasonably calculated to give actual notice, as prescribed by the law of the place where the person is served or as directed by the foreign authority in response to a letter rogatory. These rules are subject to the provisions of the Convention on the 'Service Abroad of Judicial and Extrajudicial Documents' in Civil or Commercial Matters (Hague Service Convention)."

The Hague Service Convention is a multilateral treaty finalized in 1965 by the Tenth Session of the Hague Conference of Private International Law to revise parts of the previously-adopted Hague Conventions on Civil Procedure with respect to service of process abroad. (*Volkswagenwerk Aktiengesellschaft v. Schlunk*, *supra*, 486 U.S. at p. 698; *Kott v. Superior Court*, *supra*, 45 Cal.App.4th at p. 1133.) The formal name of the treaty is Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638). (See *In re Vanessa Q.*, *supra*, 187 Cal.App.4th at p. 130.) The text of the Hague Service Convention is presented in title 28, United States Code Annotated following Federal Rules of Civil Procedure, rule 4. The United States was one of the original signatories, and the Hague Service Convention went into force here in 1969. (*Kott*, *supra*, at pp. 1134-1135.)

The Hague Service Convention "was intended to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad." (*Volkswagenwerk Aktiengesellschaft v. Schlunk*, *supra*, 486 U.S. at p. 698.) The United States Supreme Court held that "[b]y virtue of the Supremacy Clause, U. S. Const., Art. VI, the Convention pre-empts inconsistent methods of service prescribed by state law in all cases to which it applies." (*Volkswagenwerk Aktiengesellschaft*, *supra*, at p. 699.)

Article 1 of the Hague Service Convention addresses the scope of its applicability: "'The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.' [Citation.]" (*Volkswagenwerk Aktiengesellschaft v. Schlunk*, *supra*, 486 U.S. at p. 699.)

Interpreting the phrase "'occasion to transmit,'" the United States Supreme Court stated: "If the internal law of the forum state defines the applicable method of serving process as requiring the transmittal of documents abroad, then the Hague Service Convention applies." (*Id.* at p. 700.)

All the potentially applicable methods of service of process on Husband set forth in California law require the transmittal of the service documents abroad. (§ 413.10, subd. (c); *Kott v. Superior Court*, *supra*, 45 Cal.App.4th at pp. 1135-1336.) "In California service on an individual may be made by personal delivery of a copy of the summons and complaint. (§ 415.10.) Substituted service on an individual may be made by leaving a copy of the summons and complaint with a competent person at the individual's business, office, dwelling, usual place of abode or usual mailing address. (§ 415.20.) A summons also can be sent by first class mail with a return receipt requested, or coupled with an acknowledgment and return envelope with postage prepaid. (§§ 415.30, 415.40.)" (*Kott v. Superior Court, supra*, 45 Cal.App.4th at p. 1135.)[6] Thus, service on Husband is governed by the Hague Service Convention and, to the extent not inconsistent with the Convention, by the Code of Civil Procedure. (§ 413.10, subd. (c); *Volkswagenwerk Aktiengesellschaft v. Schlunk*, *supra*, 486 U.S. at pp. 699, 700; see also *Brockmeyer v. May* (9th Cir. 2004) 383 F.3d 798, 803-804.)

The main channel for service of process initiated by the Hague Service Convention in Article 2 is through a Central Authority established by each signatory

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6 California law also provides that "[s]ummons may also be served by publication, if upon application it appears to the satisfaction of the court the party to be served cannot with reasonable diligence be served in another manner. (§ 415.50, subd. (a).) However, if the party's address is ascertained before expiration of the time prescribed for publication of the summons, copies of the complaint, summons and order for publication must be mailed to the person. (§ 415.50, subd. (b).)" (*Kott v. Superior Court*, *supra*, 45 Cal.App.4th at p. 1135.) When a court approves service by publication, there is no need or requirement that the service documents be transmitted abroad, a fact which makes the Hague Service Convention inapplicable. (*Id.* at p. 1136.) Wife has made no claim that Husband could or should be served by publication.

country. The Central Authority receives service documents from the requester and then serves them in accordance with either the internal law of the receiving country or a compatible method specified by the requester. (*Kott v. Superior Court*, *supra*, 45 Cal.App.4th at p. 1134.) When service is completed, the Central Authority provides the requester with a certificate of service. (*Ibid.*) The Convention also recognizes other service methods, but each country may object to use of one or more of them within its boundaries. (*Ibid.*) The United States and Japan are both signatories to the Hague Service Convention and, hence, have agreed that service in compliance with Central Authority procedures is valid in their courts. (*Newport Components v. NEC Home Electronics* (C.D.Cal. 1987) 671 F.Supp. 1525, 1541.)

Wife did not attempt service through Japan's Central Authority. She chose other methods, both of which included sending the service documents by mail addressed to Husband to two addresses in Japan, one she believed was for his workplace and the other she thought might be for his residence. They were sent by ordinary mail, that is, a mailing method that did not require a return receipt or other document showing that Husband actually received the service documents.

2. Whether the Hague Convention Authorizes Service by Mail

Wife claims the mailings constituted one of the other methods of valid service authorized by Article 10(a) of the Hague Service Convention. Article 10(a) states: "Provided the State of destination does not object, the present Convention shall not interfere with [¶] . . . the freedom to send judicial documents, by postal channels, directly to persons abroad." (<http://www.hcch.net/index_en.php?act=conventions.text&cid=17> [as of Jan. 15, 2013].) Japan has not objected to Article 10(a). The 2003 report of the Special Commission on the Practical Operation of the Hague Service Convention states that Japan presented a statement at the commission's meeting that Japan has not issued a declaration "'that it objects to the sending of judicial documents, by postal channels, directly to addressees in Japan. . . . Japan does not consider that the use of postal channels for sending judicial documents to persons in Japan constitutes an infringement

of its sovereign power. [¶] Nevertheless, . . . the absence of a formal objection does not imply that [this postal channels method] is always considered valid service in Japan. [It] would not be deemed valid service in Japan in circumstances where the rights of the addressee were not respected."[7]

Husband and Wife point out the split between federal and California courts on the issue of whether Article 10(a) authorizes service of process by postal channels, in that Article 10(a) uses the word "send," not "serve." Neither Husband nor Wife cites any published opinion on the Article 10(a) issue from the United States Supreme Court, the California Supreme Court or the Second Appellate District.[8] It appears to be an open question in this court.

California courts of appeal in some districts have concluded that Article 10(a) does not allow service by mail in Japan, in that "send" does not mean "serve," when applying the statutory interpretation principle that words should be given their "common and

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[7] See Conclusion and Recommendation No. 57 of the "Conclusions and Recommendations of the Special Commission on the practical operation of The Hague Apostille, Evidence and Service Conventions (*28 October to 4 November 2003*)." (<http://www.hcch.net/index_en.php?act=publications.details&pid=3121&dtid=2> [as of Jan. 15, 2013].)

[8] In *In re Vanessa Q.*, *supra*, 187 Cal.App.4th 128, we held that Article 10 of the Hague Service Convention did not apply because Mexico had objected to it, valid service would be through Mexico's Central Authority and mailing a juvenile dependency petition to a parent in Mexico was not valid service. (*Id.* at pp. 134-135.)

In *Kott v. Superior Court*, *supra*, 45 Cal.App.4th 1126, we noted that the Hague Service Convention would not apply if the defendant Canadian citizen's foreign address was unknown, leaving service by publication under § 415.50 as the proper method of service. (*Kott*, *supra*, at pp. 1136-1139.)

In *In re Jorge G.* (2008) 164 Cal.App.4th 125, Division One of this court acknowledged that Article 10 permits service by a method other than through the destination country's Central Authority, but service of process by ordinary mail does not perfect service in Mexico. (*Id.* at p. 134.)

In *Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, Division Four of this court concluded that service on a British corporation by a lawyer's support service in England, with certificate of service provided to the requester in California, was sufficient to satisfy the Hague Service Convention requirements. (*Id.* at pp. 794-795.)

ordinary meaning." (See *Honda Motor Co. v. Superior Court, supra*, 10 Cal.App.4th at pp. 1045-1047; *Suzuki Motor Co. v. Superior Court* (1988) 200 Cal.App.3d 1476, 1480-1481, 1484.) By contrast, in other districts, California appellate courts have held that Article 10(a) allows service by mail, by applying the treaty interpretation principles set forth in *Volkswagenwerk Aktiengesellschaft v. Schlunk, supra*, 486 U.S. at pages 699-700. (See *Denlinger v. Chinadotcom Corp.*, *supra*, 110 Cal.App.4th at pp. 1403-1405; *Shoei Kako Co. v. Superior Court* (1973) 33 Cal.App.3d 808, 819-822.)

In *Brockmeyer v. May, supra*, 383 F.3d 798, the Ninth Circuit held that "the meaning of 'send' in Article 10(a) includes 'serve.' [Citation.]" (*Id.* at p. 802.) The case at issue was from the Central District of California. The Ninth Circuit held that the Hague Service Convention allows service of process by mail, but that the plaintiff's attempted service by ordinary mail to a defendant in England was not valid, in that the plaintiff failed to comply with the specific procedures for service by mail which were set out in Federal Rules of Civil Procedure, rule 4(f). (*Brockmeyer*, *supra*, at pp. 808-809.)[9]

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9 The Permanent Bureau of the Hague Conference on Private International Law, under whose auspices the Hague Service Convention was negotiated and drafted, publishes the periodically updated Practical Handbook on the Operation of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Practical Handbook). The third (and most recent) edition was published in 2006.

In its discussion of the split of authority in the United States as to service by mail under Article 10(a), the Practical Handbook states that it "rejects *Bankston* [*v. Toyota Motor Corp.* (8th Cir. 1989) 889 F.2d 172 (i.e., 'send' does not mean 'serve')] . . . and advocates the reasoning underlying *Ackermann* [*v. Levine* (2d Cir. 1986) 788 F.2d 830 (i.e., 'send' means 'serve')] and clearly expressed in *Brockmeyer* [*v. May*, *supra*, 383 F.3d 798]: Service by mail under Article 10(a) is possible and effective under two cumulative conditions: (i) the State of destination must not have objected to this method, and (ii) the conditions set by the *lex fori* [law of the forum] for valid service by mail must be met." (Practical Handbook, § 223, p. 80.) Further, the Practical Handbook reports that the 2003 Special Commission "reaffirmed its position that the term 'send' in Article 10(a) (English version) is to be understood as referring to 'service' through postal channels." (*Id.*, § 225, p. 80.)

We are not bound by the opinions of California appellate courts in other districts. (*Wolfe v. Dublin Unified School Dist.* (1997) 56 Cal.App.4th 126, 137.) We also are not bound by decisions of lower federal courts, including the Ninth Circuit. (*Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 835; *People v. Bradley* (1969) 1 Cal.3d 80, 86.) To resolve this appeal, however, we need not decide whether Article 10(a) of the Hague Service Convention permits service by mail in Japan.

3. Invalidity of Wife's Attempted Service by Ordinary Mail

Whether or not Article 10(a) permits service by mail, Wife's attempted service by ordinary mail is invalid. California law governs the method of mailing and proof of actual receipt by a defendant, even if Article 10(a) does authorize service by mail. Article 10(a) is silent on the details regarding the methods of mailing (e.g., ordinary, certified and/or registered mail) and proof of a defendant's actual receipt of the service documents. The United States Supreme Court held that "the Convention pre-empts *inconsistent* methods of service prescribed by state law in all cases to which it applies." (*Volkswagenwerk Aktiengesellschaft v. Schlunk*, *supra*, 486 U.S. at p. 699, italics added.) In *Brockmeyer*, the Ninth Circuit explained the relationship of Article 10(a) and the procedural law of the forum state as applied to service by mail: "Article 10(a) does not itself affirmatively authorize international mail service. It merely provides that the Convention 'shall not interfere with' the 'freedom' to use postal channels if the 'State of destination' does not object to their use. . . . [¶] . . . [W]e must look outside the Hague Convention for affirmative authorization of the international mail service that is merely not forbidden by Article 10(a). Any affirmative authorization of service by international mail, *and any requirements as to how that service is to be accomplished*, must come from the law of the forum in which the suit is filed." (*Brockmeyer v. May*, *supra*, 383 F.3d at pp. 803-804, italics added.) Therefore, the details governing the validity of Wife's service by ordinary mail must come from California law.

Under California law, three sections of the Code of Civil Procedure involve service by mail. Section 415.20 authorizes substituted service by personal delivery to a

competent person at the defendant's residence or workplace, followed by sending the service documents by first class mail addressed to defendant at the residence or workplace where the service documents were delivered. Wife claims she completed substituted service on Husband in Japan. We agree with the trial court's determination that nothing in Article 10(a) or any other provision of the Hague Service Convention authorizes such substituted service. Consequently, substituted service as authorized by section 415.20 does not constitute valid service under the Hague Service Convention.

In California law, service by mail is authorized also by section 415.30. The statue requires that the mailing include a notice and acknowledgment of receipt to be signed by the defendant and a return envelope, postage prepaid, addressed to the sender. Wife does not claim to have served Husband by mail with notice and acknowledgment of receipt under section 415.30.

The only other statutory provision authorizing service by mail is section 415.40. It provides that "[a] summons may be served on a person outside this state . . . by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt." Wife submitted proofs of service for the mailing to Husband at the address she believed was for his workplace and the mailing to him at the address she thought might be for his residence. She argues that they give rise to a rebuttable presumption that service was valid. We note that "[t]he filing of a proof of service creates a rebuttable presumption that the service was proper. However, the presumption arises only if the proof of service complies with the applicable statutory requirements." (*Floveyor Internat., Ltd. v. Superior Court*, *supra*, 59 Cal.App.4th at p. 795.)

Wife presented no evidence that either of the mailings required a return receipt. The proofs of service presented by Wife do not include any returned receipts confirming that Husband actually received the service documents. We concluded in a prior opinion that "[p]roof of service by mail on out-of-state defendants must . . . strictly comply with the requirements of Code of Civil Procedure section 417.20, subdivision (a). [Citations.] This section provides if service is made by mail on an out-of-state defendant 'proof of

service shall include evidence satisfactory to the court establishing actual delivery to the person to be served, by a signed return receipt or other evidence.' [Citation.]" (*Bolkiah v. Superior Court* (1999) 74 Cal.App.4th 984, 1001, italics omitted.) Although the trial court did not expressly refer to section 417.20, the court apparently relied on "other evidence" to rule service on Husband was valid. The court repeatedly referred to the fact that Husband never presented evidence that he actually had *not* received the service documents as evidence that Husband actually received them. Husband contends that the trial court improperly shifted the burden of proof to him. We agree.

When a defendant claims, on the ground of improper service of process, that the court lacks personal jurisdiction over him, the plaintiff has the burden of proving the facts required to establish the validity of service on the defendant. (*Summers v. McClanahan, supra,* 140 Cal.App.4th at p. 413; *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439-1440.) As Husband asserts, "a defendant is under no duty to respond to a defectively served summons and may stand mute until a plaintiff makes such a showing to the satisfaction of the court." (*Bolkiah v. Superior Court, supra,* 74 Cal.App.4th at p. 992.)

Husband also disputed the accuracy of the address that was given on the proof of service of the mailing ostensibly to his workplace. Wife presented no evidence to confirm the address was correct. Husband pointed out that Wife presented no evidence that the other address was his residence or place where he was staying or receiving mail. Wife presented only her belief that it was the address where the airline had delivered his luggage. Her belief does not constitute evidence that the service address was accurate. Wife had the burden to prove Husband actually received the service documents, but failed to do so. (*Summers v. McClanahan, supra,* 140 Cal.App.4th at p. 413; *Dill v. Berquist Construction Co., supra,* 24 Cal.App.4th at pp. 1439-1440.) The proofs of service and "other evidence" presented by Wife did not comply with section 417.20, subdivision (a). No presumption of validity of service arose from Wife's proofs of service. (*Floveyor Internat., Ltd. v. Superior Court, supra,* 59 Cal.App.4th at p. 795.)

For the foregoing reasons, we conclude that Wife's attempted service by ordinary mail did not constitute valid service of process under California law. As a result the attempted service does not comply with the Hague Service Convention, regardless of whether Article 10(a) of the Convention authorizes service of process by mail. Accordingly, the trial court's order denying Husband's motion to quash must be vacated.

DISPOSITION

The petition for writ of mandate is granted. The trial court is directed to vacate its order denying Husband's motion to quash service of summons and issue an order granting the motion. Husband shall recover his costs of this proceeding.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.